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IN THE

United States Supreme Court

WILLIAM CRAWFORD, *et al.*, *Petitioners,*

– v. –

MARION COUNTY ELECTION BOARD, *et al.*, *Respondents.*

INDIANA DEMOCRATIC PARTY, *et al.*, *Petitioners,*

– v. –

TODD ROKITA, in his official capacity as Indiana Secretary of State, *et al.*, *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF *AMICUS CURIAE* OF ROCK THE VOTE, NATIONAL BLACK LAW STUDENTS ASSOCIATION, NATIONAL BLACK GRADUATE STUDENT ASSOCIATION, THE FEMINIST MAJORITY FOUNDATION AND THE STUDENT ASSOCIATION FOR VOTER EMPOWERMENT SUPPORTING PETITIONERS

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STATEMENT OF INTEREST[1]

Rock the Vote

Rock the Vote is a nonprofit, nonpartisan organization founded in 1990 whose mission is to build the political clout and engagement of young Americans. Rock the Vote uses music, popular culture and new technologies to engage young people to register and vote in every election. It also gives young people the tools to identify, learn about and take action on the issues that affect their lives, and leverage their power in the political process. Rock the Vote uses the microphones of music, technology and youth culture to empower the 45 million young people in America who want to step up, claim their voice in the political process, and change the way politics is done.

The National Black Law Students Association

The National Black Law Students Association ("NBLSA") is the largest student-run organization in America representing over 6,000 African-American law students in the United States. In 1968, NBLSA was founded with the purpose to sensitize the law and legal profession to the ever-increasing needs of the African-American community. In efforts to

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

promote greater political participation in the African-American community, NBLSA participates in several programs to promote and protect citizens' right to vote.

The National Black Graduate Student Association

The National Black Graduate Student Association ("NBGSA") is the largest interdisciplinary graduate studies, student-run association in America representing over 100,000 African-American graduate and professional students in the United States. In 1989, NBGSA was founded with the major purposes of serving as an association to provide a support network where these graduate students can garner and direct their individual as well as collective resources for the betterment of all people of African descent through educational instruction, mentorship, research, and service. It is toward this noble end that NBGSA directs its mission and lodges its hope so to be ever vigilant in pressing toward the goals of self-determination, social justice, and human equality.

The Feminist Majority Foundation

The Feminist Majority Foundation ("FMF"), founded in 1987, is the largest feminist research and action organization dedicated to women's equality. FMF's programs focus on advancing the legal, social, and political equality of women with men, and recruiting and training young feminists for future leadership. To carry out these aims, FMF engages in research and public policy development, public education programs, grassroots organizing projects,

and leadership training and development programs. The FMF CHOICES Campus Leadership Program reaches 1,954 colleges and universities nationwide through its on-line network and field organizing. Through its CHOICES Program, the FMF has devoted significant resources to student voter education and registration initiatives on college campuses to increase significantly young women's registration and voting. The FMF has filed numerous briefs amicus curiae in the United States Supreme Court and the federal circuit courts to advance the opportunities for women and girls.

The Student Association for Voter Empowerment

The Student Association for Voter Empowerment ("SAVE") is a nonprofit, nonpartisan organization on 22 college campuses founded to increase voter turnout among students by removing access barriers and promoting stronger civic education. In addition to advocating policy changes in the electoral process to supplement traditional Get-Out-the-Vote efforts, SAVE works with community leaders, high school teachers, college professors, state and federal legislators, and fellow students to build a strong venue in their community for political dialogue, voter awareness, and active civil engagement.

SUMMARY OF ARGUMENT

There are many critical errors in the Seventh Circuit's decision upholding Indiana's severely restrictive voter identification statute, Ind. Code Ann. § 3-5-2-40.5 (West 2007). One fundamental error is the Seventh Circuit's incorrect conclusion that the burden imposed by the statute was "slight." *Crawford v. Marion County Election Bd.*, 472 F.3d 949, 952 (7th Cir. 2007), *cert. granted*, 168 L. Ed 2d 809 (2007). The panel also turned the facts on their head by suggesting that voters who do not obtain a statutorily required identification are choosing to "disfranchise themselves" rather than go to "the expense of obtaining a photo id." *Id.* Contrary to the Seventh Circuit's ruling, the prohibitively and gratuitously strict identification requirements of the Indiana law and other similar state voter identification laws impose a severe and undue burden on qualified, duly registered citizens who do not have either a federal or state-issued photo identification or the means to conveniently obtain one, and therefore are improperly denied the fundamental constitutional right to vote in violation of the First and Fourteenth Amendments.

The severe adverse impact of the voter identification law is illustrated by an examination of the effect of the statute's requirements on eligible voters ages 18 to 29 years old ("Young Adult Voters"), the focus of this *amicus* brief. Young Adult Voters, many of whom are students, have long encountered unfair obstacles to voting and have had to combat efforts designed to undermine their strength as a potential voting bloc. Restrictive voter identification laws such as the Indiana statute constitute a new,

legislatively sanctioned means of unconstitutionally deterring Young Adult Voters from participating in the democratic process by exercising their franchise, thereby diminishing the potential strength of this class of voters. That is their effect, and possibly their intent.

As we show below, empirical data demonstrates that significant numbers of Young Adult Voters do not have the government-issued identification required to vote by laws like that challenged here and will face considerable, and in some instances insurmountable, obstacles in obtaining acceptable identification. The most common type of identification available that meets the statute's requirements is a driver's license, but high numbers of eligible Young Adult Voters either lack any driver's license at all or have one only from a state where they used to reside, not where they presently reside and would be voting. Many young eligible voters have recently changed their state of residence for the purpose of attending college, graduate school or other reasons, and are therefore unlikely to have sufficient in-state identification to vote, whether it is a driver's license or other identification adequate under the voter identification law. Young Adult Voters face particular difficulties obtaining such state-issued identification because they are much less likely to have, and cannot easily obtain, the types of documentation required for an acceptable state-issued identification, such as a birth certificate, passport or utility bills in their own name.

The hurdles that Indiana's voter identification statute poses to voting should trigger strict scrutiny to assess whether the measure advances a

compelling state interest and is narrowly tailored to serve that interest. The Indiana statute and comparable laws cannot withstand such scrutiny because the severe burden imposed by the law cannot be justified where there is no evidence whatsoever of *any* in-person voter impersonation fraud and where alternatives are available that will sufficiently protect the integrity of elections without infringing the fundamental right to vote. Accordingly, this Court should hold that voter identification statutes as restrictive as the Indiana law are unconstitutional.

ARGUMENT

INDIANA'S VOTER IDENTIFICATION LAW IS SUBJECT TO STRICT SCRUTINY BECAUSE IT IMPOSES A SEVERE BURDEN ON, AND A RISK OF DISENFRANCHISEMENT OF, YOUNG ADULT VOTERS, WITHOUT ADEQUATE JUSTIFICATION

A. The Legal Standard

The right to vote has long been recognized by this Court as a "fundamental political right" that is "preservative of all rights." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (citation omitted); *see also Burdick v. Takushi*, 504 U.S. 428, 433 (1992) ("It is beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'") (internal citation omitted); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 629 (1969). The Court in *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964), identified voting's foundational role in our democracy:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

See also Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886) (The right to vote is "a fundamental political right, because preservative of all rights."); *Burson v. Freeman*, 504 U.S. 191, 198 (1992) (the right to vote is "at the heart of our democracy").

Accordingly, this Court has held that "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds*, 377 U.S. at 562. "[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972).

This Court in *Burdick* established that when an election law is challenged on constitutional grounds, the court

> *must weigh "the character and magnitude of the asserted injury* to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which

> those interests make it necessary to burden the plaintiff's rights."

Burdick, 504 U.S. at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)) (emphasis added). If the regulation imposes a "severe" restriction, it survives scrutiny only if it is "narrowly drawn to advance a state interest of compelling importance." *Id.* (citations omitted). If it is a "reasonable, nondiscriminatory restriction[]," the State must show that "important regulatory interests . . . justify the restrictions." *Id.* (citations and internal quotations omitted).

B. The Restrictive Requirements of Indiana's Voter Identification Statute

The Seventh Circuit grossly underestimated the character and magnitude of the injury created by Indiana's voter identification law. As illustrated by the Young Adult Voters profiled here, the requirement to present a federal or Indiana state-issued photo identification in order for an already registered voter to vote in person constitutes a "severe" restriction that will disenfranchise otherwise qualified voters, and, therefore, under *Burdick*, should be strictly scrutinized.

Under Indiana law, anyone who is at least 18 years old, is a United States citizen, and resides in an election precinct continuously for at least 30 days prior to an election is qualified to vote. Ind. Code Ann. § 3-7-13-1 (West 2007). Following amendments to the law, effective July 1, 2005, qualified Indiana voters, unless specifically exempt by statute, must present "proof of identification" to vote in-person.

Ind. Code Ann. § 3-11-8-25.1 (West 2007). No identification is required to vote by absentee ballot. Ind. Code Ann. § 3-11-10-24 (West 2007).[2]

Such "proof of identification" is limited to

> a document that satisfies *all* the following:
>
> (1) The document shows the name of the individual to whom the document was issued, and the name conforms to the name in the individual's voter registration record.
>
> (2) The document shows a photograph of the individual to whom the document was issued.
>
> (3) The document includes an expiration date, and the document:
>
> (A) is not expired; or
>
> (B) expired after the date of the most recent general election.
>
> (4) The document was issued by the United States or the state of Indiana.

Ind. Code Ann. § 3-5-2-40.5 (West 2007) (emphasis added).

A voter who shows up at the polls without the above-defined identification may vote by provisional

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[2] Voting by absentee ballot is restricted to voters who satisfy one of the enumerated statutory requirements set forth in Ind. Code Ann. § 3-11-10-24 (West 2007). The statute does not permit a qualified voter to submit an absentee ballot because he or she does not have, or is unable to obtain by Election Day, the requisite government-issued photo identification.

ballot only, and her ballot is valid only if within 10 days of the election, she goes to the county clerk or election board with the proof of identification required by the statute or to execute an affidavit establishing that she is unable to obtain the required identification due to indigency or religious objection. Ind. Code Ann. §§ 3-11-8-25.1; 3-11.7-5-2.5; 3-11.7-5-1 (West 2007).

The photo identification law does not apply uniformly to all voters. Proof of identification is not required for voters who live at a state licensed care facility, such as a nursing home, and vote in person in that facility. Ind. Code Ann. § 3-11-8-25.1(e) (West 2007). As discussed above, voters who are eligible to vote by absentee ballot, who are indigent and unable to obtain the necessary identification, who have a valid religious objection to being photographed, or who reside and vote in a state-licensed facility, can exercise their fundamental right to vote without presenting government-issued, unexpired, photo identification.

The voter identification requirements in Indiana are far more restrictive than in most other states. Twenty-four states do not require identification to vote, other than for first time voters who did not register in person as required by the Help America Vote Act of 2002 ("HAVA"), Pub. L. No. 107-252.[3]

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[3] Those states are California, District of Columbia, Idaho, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Rhode Island, Utah, Vermont, West Virginia, Wisconsin and Wyoming. *See* Election Reform Information Project, *Voter ID Laws*, http://www.electionline.org/Default.aspx?tabid=364

Most states that do have voter identification requirements for all voters are far less restrictive than Indiana's statute because, like HAVA, they accept a much broader range of documents as proof of identity (*e.g.*, employee or student identification or utility bills), or allow voters who lack the specified identification to vote in person after executing an identity-affirming affidavit. [4] Currently the only other state that is as restrictive as Indiana and accepts only government-issued, expiring photo identification is Georgia. Arizona also has fairly restrictive voter identification requirements, but allows eligible voters to cast their ballots in person if they present identification bearing the voter's name and current address, either one photo identification or two forms of non-photo identification, such as a current bill or bank statement. The Missouri legislature had enacted a similarly restrictive photo voter identification law, but it was found unlawful under Missouri's state constitution. *Weinschenk v. State*, 203 S.W.3d 201, 204 (Mo. 2006).

(summarizing voter identification requirements in all states and District of Columbia) (last visited Nov. 1, 2007).

[4] States that have more permissive voter identification laws include Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, Louisiana, Michigan, Missouri, Montana, New Mexico, North Dakota, Ohio, South Dakota, Tennessee and Washington. *Id.*

C. The Indiana Voter Identification Law Will Discourage Participation In The Democratic Process By Young Adult Voters

Young Adult Voters have long faced considerable obstacles to exercise their fundamental right to vote. In *Oregon v. Mitchell,* 400 U.S. 112 (1970), the United States Supreme Court overturned the portions of a federal voting rights statute which lowered the minimum voting age from 18 to 21 for state elections. Thereafter, in 1971 the 26th Amendment was passed and ratified in response to the Supreme Court's ruling. As explained by the Supreme Court of New Jersey in *Worden v. Mercer County Board Of Elections*, the purpose of the 26th Amendment was

> not only [to] extend[ ] the voting right to younger voters but also [to] encourage[e] their participation by the elimination of all unnecessary burdens and barriers. Thus the Senate Report specifically noted . . . that 'forcing young voters to undertake special burdens – obtaining absentee ballots, or traveling to one centralized location in each city, for example – in order to exercise their right to vote might well serve to dissuade them from participating in the election. This result, and the election procedures that create it, are at least inconsistent with the purpose of the Voting Rights Act, which sought to encourage greater political participation on the part of the young; such segregation might even amount to a denial of their 14th

> Amendment right to equal protection of the laws in the exercise of the franchise.' It is significant that the twenty-sixth amendment prohibited not only denial but also abridgment of the voting rights granted to the younger voters, many of whom as the congressional and legislative members well know, would be resident in their college communities at election time.

294 A.2d 233, 237 (N.J. 1972) (internal citations omitted).

Despite the passage of the 26th Amendment, efforts continued to try to restrict the rights of young adults to vote, particularly of students. *See, e.g., Symm v. United States*, 439 U.S. 1105 (1979) (striking down as unconstitutional county official's policy of only registering those students who were natives of the county, whose family lived in the county, or those who had been promised a job in the county); *Walgren v. Howes*, 482 F.2d 95 (1st Cir. 1973) (challenge to special caucus for town elections held when University of Massachusetts students were on semester recess); *Whatley v. Clark*, 482 F.2d 1230 (5th Cir. 1973) (holding statutory presumption that students were not residents, which made them ineligible to vote, unconstitutional); *Levy v. Scranton*, 780 F. Supp. 897 (N.D.N.Y. 1991) (Saratoga County's Board of Elections held to have unconstitutionally denied Skidmore College students the right to vote solely because they lived in on-campus housing); *Paulson v. Forest City Cmty. Sch. Dist. in Winnebago*, 238 N.W.2d 344 (Iowa 1976) (voters and taxpayers sued to contest a school district bond

election claiming that several students at a college in the district who had voted were not qualified to vote); *DuBois v. City of Coll. Park*, 410 A.2d 577 (Md. Ct. App. 1980) (reapportionment plan for city council districts that excluded a large segment of students who lived in the University of Maryland dormitories violated the Equal Protection Clause of the Fourteenth Amendment). As illustrated by these cases, Young Adult Voters who are students commonly face unwarranted challenges or obstacles when they seek to register and vote in the jurisdiction where they are attending school. Gerrymandering of voting districts has also been used to diminish the political strength of student voters.

Young Adult Voters, however, have overcome such concerted efforts to discourage their participation in the electoral process. Recent election cycles have seen a dramatic resurgence of political participation and voter turnout from Young Adult Voters. This group of voters has become increasingly more active, vocal and is an important, growing force in the electoral process.

In 2004, voter turnout reached its highest level since the 1968 presidential election, and Young Adult Voters were instrumental in that achievement as nearly five million more Young Adult Voters voted in 2004 than in 2000. *See* Thomas R. Patterson, *Final Report: Young Voters and the 2004 Election* (Feb. 2, 2005).[5] This spike in participation by Young

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[5] http://www.ksg.harvard.edu/presspol/vanishvoter/Releases/Vanishing_Voter_Final_Report_2004_Election.pdf (last visited Nov. 8, 2007).

Adult Voters is a recent happening. In 2000, approximately 40% of this age group voted in the presidential election, but in 2004, that number rose to 49%, an increase of 4.3 million voters in this age group, for a total of 20.1 million votes. Mark Hugo Lopez, Emily Kirby and Jared Sared Sagoff, *The Youth Vote 2004*, July 2005, Graph 2 & Table 2.[6] Notably, this revitalization of voting by young people has dramatically eclipsed that of the general population. *See* Press Release, New Voters Project, *New Poll: More Young People Paying Attention to the 2008 Election* (June 28, 2007).[7] For example, "In 2004, young voter (18-29 year olds) turnout was up 9 percent over 2000 levels – a rate three times higher than the general population." *Id.*

The trend of increased Young Adult Voter participation continued during the 2006 election cycle. An analysis of 36 precincts in Ohio, Connecticut, Iowa, Colorado and Michigan targeted by the Student Public Interest Research Group's New Voters Project found that young voter (18-24 year olds) turnout increased for the third straight year, and the average turnout in those precincts increased *157%* over 2002. Press Release, Student PIRGs' New Voters Project, *Student PIRGs' New Voters Project Posts Huge Vote Increases* (Nov. 8, 2006). [8]

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[6] http://www.civicyouth.org/PopUps/FactSheets/FS_Youth_Voting_72-04.pdf (last visited Nov. 8, 2007).

[7] http://www.newvotersproject.org/news-room/releases/new-poll-more-young-people-paying-attention-to-the-2008-election#h7NB4ZQX80Mw66m5t9Wg8w (last visited Nov. 1, 2007).

[8] http://www.washpirgstudents.org/news/recent-news/vote-increases (last visited Nov. 1, 2007).

Nationwide figures for 2006 show the same increases, 8.9 million 18-29 year old voters (22.5%) voted in 2002 and 10.8 million voters (25.5%) voted in 2006. Mark Hugo Lopez, Karlo Barrios Marrelo & Emily Hoban Kirby, *Youth Voter Turnout Increases in 2006*, Table 1.[9]

This strong momentum is not waning. A recent poll conducted by The New York Times of 17-29 year old voters strongly suggests that the current generation of young people will continue to participate in the political process in increasingly high numbers. According to the poll, 58% said they are paying attention to the 2008 elections, compared to just 35% in 2004. *More Young People Paying Attention to the 2008 Election* at 1. Further, nearly 75% reported that they are registered to vote. *Id.* Likewise, a recent poll by the Pew Research Center found that 38% of 18-29 year olds have watched candidate debates, which was about the same as 30-49 year olds and 50-64 year olds. *See* Rock the Vote, *Polling Young Voters Volume VI* (Sept. 2007).[10]

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[9] http://www.civicyouth.org/PopUps/FactSheets/FS07_2006MidtermCPS.pdf (last visited Nov. 8, 2007).

[10] http://www.youngvoterstrategies.org/index.php?tg=fileman&idx=get&inl=1&id=1&gr=Y&path=Research&file=Polling+Young+Voters+Volume+VI.pdf (last visited Nov. 8, 2007). Recent innovations in campaigning through the use of technologies that are particularly effective in reaching younger voters are effectively increasing young voter participation and facilitating this voting group's enhanced role in the democratic process. One example is the YouTube/CNN debates in the current presidential campaign in which individuals posed questions to presidential candidates via video submissions. The Pew Report found that this novel debate format was particularly appealing to young voters, who were "more enthusiastic about the debate

The increase in voting and political participation is particularly striking among college students. A nationwide survey of college students showed that 77% of polled college students voted in the 2004 presidential election. *See* Richard Niemi and Michael Hanmer, *College Students in the 2004 Election* (Nov. 2004).[11] But critically, evidence from the survey indicated that students were more likely to vote if they could register and vote at their campus addresses. Voter turnout for students who were registered at home and did not change their registration was approximately 8% lower than students who registered at school for the first time, and approximately 10% lower than those who switched their registration from their home address to their school address. *Id.*

As discussed in the following section, the Indiana voter identification law makes it substantially more difficult for Young Adult Voters to cast their ballots in person. Indiana's imposition of substantial hurdles is particularly questionable in view of the

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format than their older counterparts." *Id.* at 1. Another example is the use of text messaging by political campaigns to reach potential supporters. A recent study found that text messaging reminders to new voters increased an individual's likelihood of voting by 4.2%. Student PIRGs' New Voters Project, *Text/SMS Messaging is an Effective Method for Engaging Young Voters* (Sept. 6, 2007), http://www.newvotersproject.org/uploads/mr/8F/mr8FwQEPpPfJLKtQa8TEkw/Text-Messaging-Fact-Sheet.pdf (last visited Nov. 1, 2007).

[11] http://www.civicyouth.org/PopUps/FactSheets/FS_College_Voting.pdf.

evidence that Young Adult Voters have been voting at historically high rates, approaching or even surpassing their older counterparts. By imposing onerous and unnecessary obstacles that disproportionately hinder Young Adult Voters' right to vote, the Indiana statute suppresses the participation of this class of voters and is even worse for minority Young Adult Voters.[12] In its effect, the Indiana statute and similarly restrictive voter identification laws in other jurisdictions constitute a return to the tactics discussed above that were designed to exclude younger voters from the process and which are forbidden by the 26th Amendment.

D. Significant Numbers of Young Adult Voters Do Not Have Identification that Satisfies the Statutory Requirements or the Means of Obtaining It

The restrictions imposed by the Indiana voter identification law and similar statutes in other states are particularly burdensome for, and will substantially deter, Young Adult Voters from participating in the electoral process and exercising their right to vote.

It is common ground that Indiana driver's licenses or non-driver's identification cards issued by the Indiana Bureau of Motor Vehicles ("IBMV") are the forms of identification that would most often be used to meet the statutory requirements, but many Young Adult Voters are unlikely to have either form

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[12] *See* note 16 *infra* and accompanying text.

of identification.[13] A recent survey of registered voters in Indiana found that more than 20% of younger voters (in particular, those between the ages of 18 to 24 years old) did not have access to valid photo identification. Matt A. Barreto, Stephen A. Nuño and Gabriel Sanchez, *The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate*, Fig. 2 (Nov. 8, 2007).

Nationwide a substantial percentage of individuals 18 to 29 years old do not have a valid driver's license. Federal Highway Administration data from 2005 estimates that for this age group, 32.4% of 18 year olds, 25.1% of 19 year olds, 22.2% of 20 year olds, 20.7% of 21 year olds, 19.1% of 22 year olds, 17.1% of 23 year olds, 16.7% of 24 year olds, and 12.6% of 25-29 year olds, did not have a driver's license. *See* U. S. Dep't of Transp. Fed. Highway Admin., *Highway Statistics 2005: Driver Licensing* (Feb. 2, 2007).[14] In Indiana, more than 15% of 20 to

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[13] Another form of government identification that would meet the statutory requirements would be a United States passport. However, as of 2005, only approximately 60 million U.S. citizens had passports. U.S. State Dep't, *Special Briefing: Western Hemisphere Travel Initiative*, 4 (Apr. 5, 2005), *available at* http://www.state.gov/r/pa/prs/ps/2005/44286.html. That number represents only approximately 31% of all citizens. U.S. Census Bureau, *Current Population Reports, Voting and Registration in the Election of November 2002*, 2 Fig. 1 (July 2004), *available at* http://www.census.gov/prod/2004pubs/p20-552.pdf.

[14] http://www.fhwa.dot.gov/policy/ohim/hs05/pdf/dl22.pdf, *Chart of Licensed drivers, by sex and percentage in each age group*.

24 years olds and approximately 16% of 25 to 29 year olds were not licensed drivers in 2005. *Id.*[15]

The rate of young adults who are licensed drivers also varies with other factors, such as race, whether the individual lives in an urban area or whether the individual is a student originally from out of state. A recent study of the rates of young people in Wisconsin who do not have a valid driver's license examined a number of these factors. *See* John Pawasarat, *The Driver License Status of the Voting Age Population in Wisconsin*, 1-2 (2005).[16] This study, completed in June 2005 by the Employment and Training Institute at the University of Wisconsin-Milwaukee using census data and data from the Wisconsin Department of Transportation, found that younger people were less likely to possess a driver's license. *Id.* at 1-2. The study also found that 78% of African-American males aged 18 to 24, 66% of African-American females aged 18 to 24, 57% of Latino males aged 18 to 24, and 63 % of Latino females aged 18 to 24 lacked a valid driver's license. *Id.* at 4-5.[17]

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[15] *See also* Barreto, Table 1.1 (noting that more than 25% of registered Indiana voters between 18 and 34 years old did not have a valid driver's license).

[16] http://www.uwm.edu/Dept/ETI/barriers/DriversLicense.pdf (last visited Oct. 29, 2007).

[17] Notably, minority males aged 18 to 29 are already a voting population that is dramatically under-represented: minority voter registration and turnout is lowest among young minority men. According to a review of voter participation in the 2006 elections based on the United States Census Bureau's Current Population Survey, only one in five black men aged 18 to 29 voted in 2006. *See* Douglas R. Hess, Representational Bias in

The University of Wisconsin-Milwaukee study also found that transient populations, which included out-of-state students, were less likely to have valid driver's licenses. Less than 3% of the 12,624 students living in the residence dorms at Marquette University, the University of Wisconsin-Madison, and the University of Wisconsin-Milwaukee had driver's licenses that listed their dorm address. Pawasarat at 11-12. As noted above, "[a]bout 1 in 6 Americans move each year" and students move even more frequently than the average. *See* Kristin A. Hansen, U.S. Census Bureau, *Geographical Mobility* (Jan. 2001).[18] *See also* Spencer Overton and the Brennan Center for Justice, *Response to the Report of the 2005 Commission on Federal Election Reform* (Sept. 19, 2005).[19]

The rates of licensed drivers among young adults in Indiana are likely to be affected by similar factors. Approximately 12% of persons living in Indiana in

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the 2006 Electorate (Sept. 2007), http://projectvote.org/fileadmin/ProjectVote/Publications/Representational_bias_report_2006.pdf (last visited Oct. 29, 2007). Only 42% of the voting eligible population of Black men aged 18 to 29 were registered, 36% of the voting eligible Asian men aged 18 to 29 were registered, and 41% of the voting eligible Latino men aged 18 to 29 were registered. *Id.* at 14. Of these populations only 48%, 37%, and 43% respectively of those percentages registered actually voted in 2006. *Id.*

[18] http://www.census.gov/population/www/pop-profile/geomob.html. The same 2001 Census Report concluded that approximately 75% of moving individuals move within the same state, and thus these individuals would have no reason unrelated to voting to obtain a new driver's license. *Id.*

[19] http://www.carterbakerdissent.com/final_carterbaker_rebuttal092005.pdf (last visited Oct. 30, 2007)

2000 identified themselves as a race other than White. U.S. Census Bureau, *Profile of General Demographic Characteristics: 2000.* [20] Approximately 21% of the Indiana population in 2000 was between 20 and 34 years old. *Id.*

A substantial number of young adults move to Indiana from out of state to attend school and, therefore, are unlikely to have state-issued identification, even if they are licensed drivers. In 2004, there were 356,801 students attending degree-granting institutions in Indiana. *See* U.S. Dept. of Education, Institute of Education Sciences, National Center for Educational Statistics, *State Education Data Profiles.*[21] Of the 64,000 freshman enrolled in degree-granting institutions in Indiana, 13,540 or about 22% moved into Indiana to attend school. *See* U.S. Dept. of Education, Institute of Education Sciences, National Center for Education Statistics, *Digest of Education Statistics.* [22] More recent enrollment figures from the two largest public universities in Indiana show similarly large numbers of students migrating into Indiana from out-of-state to attend school. For instance, at Indiana University, in fall 2006, over 14,000 students, or approximately 22.6% of its enrolled student body, were from outside of Indiana. *See* Indiana University Factbook 2006-

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[20] http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=04000US18&-qr_name=DEC_2000_SF1_U_DP1&-ds_name=DEC_2000_SF1_U&-_lang=en&-redoLog=false&-_sse=on.

[21] http://nces.ed.gov/programs/digest/do5/tables/dt05_191.asp.

[22] http://nces.ed.gov/programs/digest/d06/tables/dt06_207.asp.

2007, 23.[23] At Purdue University, another large public university, during the 2005-06 school year, over 11,000, or a little over 40% of, students were from outside of Indiana. *See* Purdue University Chart of Enrollment by U.S. State and Region.[24] There are also significant numbers of students from outside of Indiana attending private colleges and universities in the state. At the University of Notre Dame, 63% of the freshman 2007 class of undergraduates, or approximately 1,250 of the enrolled class of 1,985, were from outside of the Midwest, and some portion of the Midwestern students were likely from outside of Indiana. *See* University of Notre Dame News and Information[25]; University of Notre Dame Office of Undergraduate Admissions Statistics.[26] Among the undergraduates at Butler University in 2005-06, approximately 1,700 were from outside of the state. Butler University Office of Institutional Research and Assessment, ***Residences of Full-Time Undergraduates by State.***[27]

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[23] http://factbook.indiana.edu/fbook06/fact_book_0607.pdf (last visited Oct. 23, 2007).

[24] http://www.pmc.purdue.edu/datadigest/2005_06/pages/students/stu_res.html (last visited Oct. 23, 2007).

[25] http://newsinfo.nd.edu/content.cfm?topicid=15 (last visited Oct. 23, 2007).

[26] http://admissions.nd.edu/admission-and-application/admissions-statistics (last visited Oct. 30, 2007).

[27] http://www.butler.edu/oir/Tables/pdf_2002/Table%201.14.pdf (last visited Oct. 23, 2007). The influx of students into Indiana to attend school is hardly unique, and other states as well have many students arriving from other states. For instance, in 2004, more than 36,000 freshmen in New York State colleges and universities were from outside of the state. Sam Roberts, "For

Thus, a large segment of the student population (those that attend school out-of-state) will be unable to vote at their college address. Given the bureaucratic hurdles that college students must surmount to vote at school, the Indiana voter identification law makes voting at one's college address exceedingly difficult and thus is a significant deterrent to voting.

Eligible student voters attending private higher education programs in Indiana cannot use their student photo identification cards to vote (because it is not state-issued). Student identification cards from many public universities in Indiana are also

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Freshmen Heading Out of State, New York Is Top Choice," *New York Times* (July 14, 2006), *available at* http://www.nytimes.com/2006/07/14/nyregion/14ice.html?_r=1&oref=slogin. Nationwide, in the fall of 2004, 19% of all freshmen students enrolled in degree-granting institutions in the United States were attending a school outside of their home state. *See* U.S. Dept. of Education, Institute of Education Sciences, National Center for Education Statistics, *Digest of Education Statistics, available at* http://nces.ed.gov/programs/digest/d06/tables/dt06_207.asp.

Younger people are among the most transient in our nation. Over one-third of persons aged 20 to 24 are likely to have moved in the past year. 35.8% of persons 20 to 24 years old moved between 1992 and 1993, which was about twice the annual rate found for all persons 1 year old and over, 16.8%. *See* Kristin A. Hansen, U.S. Census Bureau, *Geographical Mobility* (January 2001), *available at* http://www.census.gov/population/www/pop-profile/geomob.html. Renters, such as students living in off-campus housing, are also much more likely to move. About one-third of persons living in renter-occupied housing units in March 1993 had moved in the previous year (32.9%). *Id.* In contrast, fewer than 1 in 10 persons in owner-occupied housing units had moved in the same period (9.1%). *Id.*

unacceptable because they lack an expiration date, affecting a huge number of students. For example, the student identification cards at the following public universities do not satisfy the statutory requirements: Indiana State University, with student enrollment of approximately 10,700, *see* Indiana State University Fast Facts [28]; Indiana University-Purdue University Indianapolis, with student enrollment of approximately 30,000, *see* University Reporting & Research, Indiana University Enrollment, First Semester, 2007-2008, at 4[29]; Purdue University-West Lafayette, with student enrollment of approximately 39,000, *see* Purdue University, About Purdue University [30]; and the University of Southern Indiana, with student enrollment of approximately 10,000, *see* University of Southern Indiana Fast Facts.[31]

Thus, Young Adult Voters who cannot rely on their student identification to vote, who do not have a passport, and have recently relocated to Indiana likely will need to obtain state-issued identification from the IBMV. Obtaining one (whether a driver's license or non-driver's identification) is an arduous process in light of the nature and extent of documentation required by the IBMV.

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[28] http://web.indstate.edu/news/fastfacts.html (last visited Nov. 5, 2007).

[29] http://factbook.indiana.edu/~urr/enrollment/2007-08/enrollment_full_report_4078.pdf (last visited Nov. 5, 2007).

[30] http://www.purdue.edu/Purdue/about/index.html (last visited Nov. 5, 2007).

[31] http://www.usi.edu/facts/index.asp (last visited Nov. 5, 2007).

To obtain a new Indiana license or non-driver's identification card, an individual must present to the IBMV two documents proving identification, including at least one "primary" document. *See* Indiana Bureau of Motor Vehicles Identification Requirements. [32] Primary documents must be original documents or stamped or sealed facsimiles. Primary documents include a birth certificate; a certificate of Naturalization/Citizenship; a certification of report of birth; a U.S. consular report of birth; a U.S. Veterans Universal Access Identification card with photo; a U.S. Military/Merchant Marines identification card with photo; a U.S. Passport; a valid foreign passport with photo and a visa that includes a valid form I-94 indicating the authorized duration of stay in the United States; or a valid foreign passport with a current visa that states, "Upon Endorsement Serves as a Temporary I-551 evidencing Permanent Residence for 1 year." *Id.* Secondary documents include a wider array of documentation, but Young Adult Voters, particularly those individuals who live in a dormitory or a sublet, who are non-drivers, not employed, and have limited incomes, may not readily have even one of the secondary documents.

As most voters will not have a passport, military, or veteran's ID, one of the more common forms of primary document used is a birth certificate. Indiana only accepts, however, a birth certificate with an authenticating stamp or seal containing the applicant's date of birth, place of birth, and parent's

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[32] http://www.in.gov/bmv/driverlicense/idreq.html (last visited Oct. 30, 2007).

names issued by a county department or county board of health from the applicant's state of birth, a state department or state board of health from the applicant's state of birth, or a verified delayed birth certificate. *Id.* In Indiana, obtaining a certified copy of a birth certificate from a county board of health costs $10. *See* Indiana Commission of Public Records.[33] For individuals born in other states, the cost may be more. For instance, the total cost of obtaining a certified birth certificate from Boston, Massachusetts is $15. *See* City of Boston Registry Division Website.[34]

In addition to the expense, the process of obtaining a certified birth certificate from another state can be particularly difficult and time-consuming and may require numerous calls or actual visits to the appropriate out-of-state agency. For example, a Young Adult Voter residing in Indiana, who was born in New York City, would have to contact the New York City Department of Health and Mental Hygiene. *See* New York City Department of Health and Mental Hygiene Office of Vital Records Website.[35] Although the individual requesting a certified copy of his or her birth certificate may apply via internet, phone, mail, or fax, an individual must be prepared to supply all of the following information: full name as listed on the birth

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[33] http://www.in.gov/icpr/webfile/formsdiv/49607.pdf (last visited Oct. 30, 2007).

[34] http://www.cityofboston.gov/registry/registerbirth.asp (last visited Oct. 30, 2007).

[35] http://www.nyc.gov/html/doh/html/vr/vr.shtml (last visited Oct. 30, 2007).

certificate; sex; date of birth; mother's maiden name; father's full name if available; hospital or street where birth occurred and the borough; relationship to the person named on the birth certificate; reason for requesting the certificate; credit card number and credit card expiration date, daytime telephone number, billing address, and number of copies. *See, e.g.,* New York City Department of Health and Mental Hygiene Office of Vital Records Website.[36] The credit card must be in the name of the individual requesting the birth certificate. *Id.*

The fee for each birth certificate is $15, and a mailing fee of $5.50 is applied to each order. *See* New York City Department of Health and Mental Hygiene Office of Vital Records Website.[37]

In addition to establishing their identity through two documents, including one primary document, in order to obtain an IBMV license or identification the Young Adult Voter must also present proof of a Social Security number[38] or ineligibility and proof of Indiana residency. *See* Indiana Bureau of Motor Vehicles Identification Requirements.[39] Proof of

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[36] http://www.nyc.gov/html/doh/html/vr/vrbappl-4.shtml (last visited Nov. 1, 2007).

[37] http://www.nyc.gov/html/doh/html/vr/vrbappl-4.shtml (last visited Nov. 1, 2007).

[38] Proof of a Social Security number must include the card itself or another form of verified letter or report issued by the Social Security Administration. *See* Indiana Bureau of Motor Vehicles Identification Requirements, http://www.in.gov/bmv/driverlicense/idreq.html (last visited Oct. 30, 2007).

[39] http://www.in.gov/bmv/driverlicense/idreq.html (last visited Oct. 30, 2007).

Indiana residency thus may require yet another document that contains the applicant's name and residential address. *Id.*[40] (IBMV provides that in some instances a primary or secondary document may be used as proof of Indiana residency along with one of select types of documents provided the document contains the applicant's name and residential address). For an out-of-state student, obtaining acceptable documentation of residence may prove difficult because a student voter who lives in a dormitory or rents an apartment with others may not have bills in his or her name. The utilities may be billed to the university, the landlord or a roommate. A student voter from out of state also may not have a bank account with a local Indiana address. Mailings to a P.O. Box are not acceptable proof of residency. *Id.*

Young Adult Voters who do not have the required photo identification on Election Day and who are required to vote a provisional ballot will be required to navigate the bureaucratic maze of the IBMV and/or a board of health in Indiana or outside of the state within ten days of the election, and then go to

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[40] Satisfaction of this requirement may prove difficult even for younger voters who do have photo identification. In a nationwide survey of eligible voting-age citizens, 18% of citizens aged 18 to 24 years old did not have photo identification with their current address and name, which according to 2004 census figures amounts to almost 4.5 million citizens. Brennan Center for Justice at NYU School of Law, ***Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification,*** November 2006, ***available at*** http://www.brennancenter.org/dynamic/subpages/download_file_39242.pdf.

the county election board or circuit court clerk in order to present the acceptable identification if they were able to obtain it. This will entail yet further efforts by the voter, including for some taking time off from work or away from classes and the cost of traveling to the state office. A voter who is willing to swear that he is "indigent," and thereby avoid obtaining a photographic identification (if election officials agree that he or she is indigent) must still make this second trip to the election board or clerk's office in order to complete this affidavit. Ind. Code Ann. § 3-11.7-5-2.5 (West 2007).

In short, Indiana's voter identification requirements, as compared to other states that do not require additional identification to vote[41] or those states that accept a student photo identification,[42] whether or not it is state-issued and regardless of whether it bears an expiration date, to prove identity to vote, are particularly onerous for Young Adult Voters who otherwise meet all of the qualifications in Indiana to vote.[43] In view of the anomalous

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[41] *See* note 3 *supra*.

[42] Alabama, Alaska, Arkansas, Florida, Missouri and South Dakota. *See* Election Reform Information Project, ***Voter ID Laws,*** http://www.electionline.org/Default.aspx?tabid=364 (summarizing voter identification requirements in all states and District of Columbia) (last visited Nov. 1, 2007).

[43] The Georgia voter identification law, which also requires government-issued, unexpired identification, will likely have a similar oppressive effect on Young Adult Voters. A recent survey found that 34% of registered Georgia voters who may not have photo identification are 30 years old or younger. ***No ID? Votes Cast Can Become Castoffs?***, Atlanta-Journal Constitution (Nov. 2, 2007). The effect on young minority voters will likely be even more severe since the same survey found that 46% of

complexity of the hurdles imposed by Indiana to voting by students and others, the lack of any demonstrated experience warranting such substantial hurdles, and the highly partisan legislative vote that imposed Indiana's law,[44] strict scrutiny is warranted, and necessarily results in invalidating Indiana's voter identification law.

CONCLUSION

For the reasons set forth above the judgment below should be reversed, and Indiana's voter identification law held unconstitutional.

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the registered voters who may not have satisfactory identification are African-American. *Id.*

[44] *See* Lesley Stedman Weidenbener, *Voter ID bill sent to Daniels; Law would be Nation's Toughest*, The Courier-Journal, Apr. 13, 2005, at 1A; Lesley Stedman Weidenbener, *House Passes Voter-ID Bill; Party-Line Vote Follows Heated Debate On Issue*, The Courier-Journal, March 22, 2005, at 1B.